

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	File No. 21-cr-268
)	(SRN-LIB)
Plaintiff,)	
)	
vs.)	Duluth, Minnesota
)	March 22, 2022
Alexia Gah Gi Gay Mary Cutbank)	1:23 p.m.
(1), and Mia Faye Sumner (2),)	DIGITAL RECORDING
)	
)	
Defendants.)	

BEFORE THE HONORABLE LEO I. BRISBOIS
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(MOTION HEARING)

APPEARANCES

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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Defendants present)

4
5 THE COURT: This is the matter of the United
6 States of America v. Alexia Gah Gi Gay Mary Cutbank,
7 21-cr-268(1) and Mia Faye Sumner 21-cr-268(2).

8 Counsel, please note your
9 appearances/representation for the record starting with the
10 Government.

11 MS. AANSTAD: Good afternoon, Your Honor. Deidre
12 Aanstad on behalf of the United States.

13 MR. ZAYED: Good afternoon, Your Honor. RJ Zayed
14 and Donna Reuter on behalf of Ms. Alexia Cutbank who is here
15 and present before the Court.

16 MS. ELKINS: Good afternoon, Your Honor. Shannon
17 Elkins on behalf of Mia Sumner who is seated to my right.

18 THE COURT: All right. We have various motions
19 filed for discovery and production subject to order, and
20 then we have a few motions for -- subject to Report and
21 Recommendation. We're going to take the discovery issues
22 first.

23 You can stay where you are at. You don't need to
24 worry about the podium. You can -- the mask requirement
25 is -- no. You can stay where you are at. The masks are no

1 longer mandatory, although they are recommended. So when
2 you're not addressing the Court, it's probably a better
3 idea, given the close proximity that we all have and the
4 limited space here, to continue to use your masks. When you
5 are arguing and addressing the Court, however, you can
6 remove your mask.

7 The -- I'm going to call them by number as they
8 are related, and then you'll have the opportunity to make
9 whatever additional comments you want to your written
10 submissions. And then when all the discovery issues are in,
11 then we'll take up the motions that are subject to Report
12 and Recommendation.

13 Docket Numbers 57 and 77 are Defendant Sumner's
14 and Defendant Cutbank's motions to retain rough notes. The
15 Government has no objection to the preservation of rough
16 notes by agents of law enforcement.

17 Anything anybody else has -- wants to add?

18 MR. ZAYED: Not on behalf of Ms. Cutbank,
19 Your Honor.

20 MS. ELKINS: No, Your Honor.

21 MS. AANSTAD: Nothing from the Government,
22 Your Honor.

23 THE COURT: All right. Docket Numbers 53 and 78
24 is Defendant Sumner and Defendant Cutbank's motions for
25 notice of 404(b) materials that the Government intends to

1 introduce at trial. At the time that the written response
2 was filed, the Government hadn't yet made a decision as to
3 what, if any, 404(b) materials would be offered at trial,
4 but it did acknowledge its obligations and that it will
5 comply. There's a -- difference here is that Defendant
6 Sumner's motion sought immediate disclosure. Defendant
7 Cutbank's motion sought four weeks before trial. And the
8 Government's written response suggested two weeks before
9 trial.

10 So in my eminent wisdom as the learned jurist I
11 am, it's going to be 21 days before trial. How does that
12 work for everyone?

13 MS. AANSTAD: No objection, Your Honor.

14 MR. ZAYED: No objection (inaudible).

15 MS. ELKINS: No objection.

16 THE COURT: Okay. Then Docket Numbers 54, 79, and
17 80 are Defendant Sumner's and Defendant Cutbank's motions
18 for exculpatory materials pursuant to *Brady* and impeaching
19 materials pursuant to *Giglio*. The Government has indicated
20 in its written response that it's aware of its obligations,
21 has complied with *Brady* to the extent that it has any in its
22 possession, will continue to comply if any becomes
23 available.

24 And with regard to impeaching materials under
25 *Giglio* and its progeny has indicated it will produce -- has

1 offered to produce those materials seven days before trial.
2 Seven business days?

3 MS. AANSTAD: Yes, Your Honor.

4 THE COURT: Seven business days before trial for
5 the Government's trial witnesses. Mr. Zayed?

6 MR. ZAYED: Thank you, Your Honor. I would
7 request --

8 THE COURT: Your mic is not on.

9 MR. ZAYED: Thank you, Your Honor. I would
10 request a minimum of three weeks before trial or 15 business
11 days.

12 THE COURT: Ms. Elkins?

13 MS. ELKINS: I would join Mr. Zayed's motion,
14 Your Honor.

15 THE COURT: Any final response, Ms. Aanstad?

16 MS. AANSTAD: None, Your Honor.

17 THE COURT: Docket Numbers 56 and 81 are Defendant
18 Sumner and Defendant Cutbank's motions for mandatory early
19 disclosure of Jencks materials. Both motions seek that
20 mandatory disclosure order requiring the Government to
21 disclose two weeks before trial. The Government objects on
22 the basis of Eighth Circuit authority but volunteers to
23 disclose any remaining Jencks materials seven business days
24 before trial.

25 Mr. Zayed, Ms. Elkins, any change in the

1 jurisprudence that I have to be reading?

2 MR. ZAYED: No, Your Honor. The only thing is
3 that this case is going to be largely witness testimony, and
4 I think providing the materials seven days in advance of
5 trial only may necessitate me seeking a continuance of the
6 trial date because that might not be enough time for me to
7 travel up to Red Lake with my investigators to talk to these
8 various witnesses to the extent they want to talk to me. So
9 I would -- I know the jurisprudence is that you cannot
10 compel it, but I would ask that you urge the Government to
11 at least provide it 14 days in advance of trial.

12 THE COURT: Well, the Government's seven business
13 days offers -- depending -- could be nine or ten days,
14 actual calendar days.

15 So, Ms. Elkins, anything you want to add?

16 MS. ELKINS: No, Your Honor.

17 THE COURT: Ms. Aanstad?

18 MS. AANSTAD: Your Honor, given the circumstances
19 of this case, the Government has been generous with seven
20 business days. As the Court indicated, that could be nine
21 to ten days prior to trial. The Government is unwilling to
22 move it any further given the circumstances of this case.

23 THE COURT: All right. Docket Numbers 55 and 86
24 are Defendant Sumner's and Defendant Cutbank's motion for
25 discovery and inspection, Rule 16(a)(1)(A)

1 through 16(a)(1)(G). Both motions do seek disclosure of
2 experts pursuant to 16(a)(1)(G), but they don't suggest a
3 timing requirement. The Government has its own motion for
4 discovery, and somewhat related to this, one of the
5 subparagraphs is for expert disclosure. The Government is
6 proposing that if you have experts -- I think I'm reading it
7 the right way. The Government's proposal is that if either
8 side has experts that they intend to introduce in their
9 case-in-chiefs or their defense-in-chief, that they disclose
10 them 30 days before trial and that -- simultaneously, and
11 that any rebuttals to those disclosures would be
12 simultaneously due ten days before trial. Is that right?

13 MS. AANSTAD: Correct, Your Honor.

14 THE COURT: Okay. If the defense does not have
15 case-in-chief experts, a rebuttal expert would not be
16 challenged as untimely to any of your case-in-chief experts;
17 right?

18 MS. AANSTAD: No, Your Honor. As long as it was
19 disclosed ten days prior.

20 THE COURT: Yeah.

21 MS. AANSTAD: Yes.

22 THE COURT: Okay. All right. Anything you want
23 to add about the expert issue?

24 MR. ZAYED: Yes, Your Honor. I think it should be
25 staggered. The Government should -- the Government bears

1 the burden, as Your Honor knows. Defendant has no burden.
2 And so I think if the Government is going to plan on using
3 experts, they need to disclose those experts in sufficient
4 time for me to ascertain whether I need to retain experts
5 and bring them on board to challenge the Government's
6 experts or just to retain an expert to consult with in terms
7 of cross-examining. So I think it needs to be staggered
8 given that the burden of proof is zero on the defendant and
9 all on the Government.

10 THE COURT: Well, isn't it effectively staggered?
11 I mean, if -- if you don't want to bring the -- let's call
12 it an affirmative expert or, you know, for -- the Government
13 would disclose their experts 30 days, and you'd have 20 days
14 to review it, retain someone, and then that person would
15 have to be disclosed ten days before. That's -- they are
16 not requiring you to have a response --

17 MR. ZAYED: Okay.

18 THE COURT: -- simultaneous -- you know, on that
19 30th day if it's solely for purposes of rebutting the
20 Government's expert.

21 MR. ZAYED: I did not appreciate that subtlety,
22 Your Honor. I understood that the request was that both
23 sides produce their experts 30 days before trial.

24 THE COURT: Well, if you have -- like I said, to
25 borrow from, you know, civil context, if you have got an

1 expert that's going to assert some sort of affirmative
2 defense as opposed to a rebuttal expert, that would be due
3 30 days. If it's only rebutting the Government's experts,
4 then it would be due 10 days.

5 MR. ZAYED: Thank you, Your Honor, for that
6 clarification. I'm appreciative of that. I think I would
7 need more than 20 days between the Government's disclosure
8 and disclosing my rebuttal expert, but I appreciate the
9 Court's clarification. I can live with that if I bring an
10 affirmative expert, not relying on anybody, I would say that
11 that be provided 45 days before trial. And then the
12 other -- to the extent that I do not 45 days before trial,
13 then maybe 15 days before trial is my rebuttal expert.

14 THE COURT: Ms. Elkins?

15 MS. ELKINS: I think that sounds reasonable,
16 Your Honor. I understand that both of these women are going
17 to be facing very significant sentences in this case and
18 that it's not the run-of-the-mill case.

19 THE COURT: We don't have a trial date obviously
20 yet. And because of the dispositive motions subject to R&R,
21 it won't be set any time soon. So -- or, at least, you
22 know...

23 Ms. Aanstad, any last remark?

24 MS. AANSTAD: Your Honor, I'd only note that this
25 case isn't built upon expert testimony. Any expert

1 witnesses that may be called, the substance of their
2 testimony has already been disclosed in the form of geofence
3 warrants and the results of those geofence warrants, as well
4 as any, I guess, minimal BCA, Bureau of Criminal
5 Apprehension, forensic analysis. So I don't anticipate it
6 being a heavy list. So if the Court orders 45 days and
7 15 days, that's fine with the Government.

8 THE COURT: Docket Numbers 76 and 83 are the
9 Defendant Sumner and Defendant Cutbank's motions for
10 disclosure of grand jury transcripts. The Defendant
11 Sumner's motion on its face was limited to disclosure of
12 witnesses appearing today. Defendant Cutback's -- Cutbank's
13 motion, I read it to be both witnesses today and anybody
14 who's appeared at a grand jury in this case. The Government
15 seems to have read both motions as to hearing and trial
16 witnesses. So we've got three different interpretations.

17 Mr. Zayed, anything you want to add?

18 MR. ZAYED: Yes, Your Honor. To the extent that
19 it's all -- if a witness testified before the grand jury and
20 is not going to be called at the motions hearing or at
21 trial, then I withdraw that portion of it. But I maintain
22 my motion as to any witnesses --

23 THE COURT: Okay.

24 MR. ZAYED: -- who testified -- who will testify.

25 THE COURT: Ms. Elkins?

1 MS. ELKINS: I just maintain my motion,
2 Your Honor.

3 THE COURT: So --

4 MS. ELKINS: I don't believe anyone today that's
5 testifying testified at the grand jury.

6 MS. AANSTAD: That's correct, Your Honor.

7 THE COURT: And that was going to be my question.

8 MS. AANSTAD: Your Honor, neither officer that is
9 testifying today has testified at the grand jury.

10 THE COURT: Okay. One of the things that was in
11 the Government's response was that, you know, obviously
12 subject to *Brady* obligations, which would trump the Jencks
13 Act, any grand jury testimony would be -- relative to a
14 trial witness, the Government would produce that at the same
15 time as the seven business days --

16 MS. AANSTAD: Correct, Your Honor.

17 THE COURT: -- discussion we already had?

18 MS. AANSTAD: Yes, Your Honor.

19 THE COURT: Okay. All right. Docket Number 84
20 and Docket Number 95 is Defendant Cutbank's motion for
21 disclosure of confidential informants, and I reference
22 Docket Number 95 as somewhat related. It's Defendant
23 Sumner's motion for disclosure of post-conspiracy
24 co-defendant or unindicted co-conspirator statements since
25 it's, I guess, possible that that could also be an

1 informant. So -- and I think, Ms. Elkins, 95 is the one
2 that in the status conference that the Court held with
3 counsel for all parties prior to this hearing that you
4 wanted to address?

5 MS. ELKINS: Yes, Your Honor.

6 THE COURT: Okay. Mr. Zayed, anything you want to
7 add to your motion, Docket Number 84?

8 MR. ZAYED: No, Your Honor.

9 THE COURT: Ms. Aanstad, anything specific to 84
10 that you want to add?

11 MS. AANSTAD: No, Your Honor.

12 THE COURT: Okay. Ms. Elkins?

13 MS. ELKINS: May I approach the podium?

14 THE COURT: If you wish.

15 MS. ELKINS: Your Honor, as to my motion, there's
16 a couple of issues. I received the search warrant for the
17 Facebook accounts on Thursday of last week. And in my
18 review of that, there appear to be confessions made by
19 Ms. Cutbank and Ms. Sumner to different people at various
20 times after the conspiracy.

21 THE COURT: Whose Facebook account?

22 MS. ELKINS: The search warrant is for both of
23 their Facebook accounts.

24 THE COURT: Okay.

25 MS. ELKINS: And the Facebook accounts of many

1 people. That, I believe, is Government Exhibits 2 and 3.

2 THE COURT: Okay.

3 MS. ELKINS: But within the text and within the
4 affidavit, Cutbank makes some confessions to someone who I
5 believe is named Victoria Becerra, B-e-c-e-r-r-a, via
6 Facebook somewhat admitting some involvement, somewhat
7 putting other people present.

8 Then Ms. Sumner allegedly confesses to Victoria
9 Becerra on September 24th, 2019, after Ms. Becerra had
10 visited Ms. Sumner in the Northwest Juvenile Correction
11 Center in Bemidji.

12 So within the Government Exhibit 2, we have some
13 problematic confessions that could possibly be admissible
14 against one defendant but would not be admissible against
15 the other defendant. This creates a *Bruton* issue. So we
16 are asking for Ms. Becerra's statements that she has made to
17 law enforcement or others regarding alleged confessions of
18 Ms. Sumner, her co-defendants, or any unindicted
19 co-defendants.

20 I also have reason to believe, Your Honor, that
21 there are other confessions out there made by Ms. Sumner's
22 co-defendants that would be inadmissible as to her. I have
23 been told that if there were any of those statements that
24 were exculpatory, that Ms. Aanstad would have given them to
25 me already under *Brady* and *Giglio*. But I am concerned about

1 the amount of witness testimony and what co-conspirators or
2 unindicted co-conspirators might have said after the offense
3 date because the case is largely built on that, which I
4 think creates a unique *Bruton* issue in this case. And I'm
5 not looking for full Jencks discovery. I'm just looking for
6 confessions of co-defendants or unindicted co-conspirators.
7 So that's Document 95.

8 And as far as 96, the motion to sever defendants,
9 I know that you haven't mentioned that yet, but I would ask
10 for leave -- I can waive that motion at this time since it
11 seems too early, and perhaps I can take that up with Judge
12 Nelson after I receive some of the *Bruton* statements because
13 maybe it would be more appropriate at that time.

14 THE COURT: All right. Docket Number 96 is
15 withdrawn without prejudice.

16 Wait. I have a question.

17 MS. ELKINS: Oh, sorry, Your Honor.

18 THE COURT: That's okay. So just so I understand,
19 the scope of the disclosures you're seeking isn't the whole
20 universe of anything that the Government might use at trial.
21 It's if a -- someone other than an indicted defendant or --
22 I guess it would include the co-defendants. It would be the
23 co-defendants and anyone who is not indicted but has said
24 something against their penal interests; is that right?

25 MS. ELKINS: Um --

1 THE COURT: At this time you're not looking for
2 anything that would be inculpatory that they said about
3 someone else? I mean, *Brady* is different, but --

4 MS. ELKINS: Yes.

5 THE COURT: -- what I understood you to say was if
6 a co-defendant has subsequently confessed or if an
7 unindicted co-conspirator also subsequently confessed,
8 that's why I'm saying it's against their penal interests.

9 MS. ELKINS: Correct.

10 THE COURT: As opposed to they are saying
11 something that, you know, Ms. Sumner did that may be subject
12 to disclosure at a later date if they are going to be a
13 trial witness or not?

14 MS. ELKINS: That's correct. I agree, Your Honor.
15 I think the latter would be Jencks.

16 THE COURT: Yeah.

17 MS. ELKINS: But what I'm asking for is much more
18 in line with the ruling in *Bruton*.

19 THE COURT: Okay. All right.

20 Ms. Aanstad, with regard to that limited clarified
21 scope, do you want to address that?

22 MS. AANSTAD: Quite candidly, Your Honor, I'm not
23 quite sure what defense counsel is requesting. The
24 Government is aware of its obligations with respect to *Brady*
25 and *Giglio* and has and will continue to make those

1 disclosures.

2 With respect to *Bruton* and disclosure under
3 *Bruton*, it isn't a requirement that the Government open its
4 discoverable file at a given time as long as the Government
5 is complying with *Brady* and *Giglio*. And the Government has
6 done that.

7 *Bruton* statements are treated no differently than
8 Jencks Act material, and so it's the Government's position
9 that defense counsel is not entitled at this point in time
10 to post-conspiracy statements or co-conspirator statements.
11 Those that are alleged or that are being identified in a
12 search warrant is not -- I guess -- well, I'll tackle first
13 the issue with respect to it might be neither here nor
14 there, but I have heard now a couple of times that defense
15 counsel just received discovery last week with respect to
16 these materials, but discovery was made in accordance with
17 the Court's order and all of these materials were available
18 at that time. So now to hear that there are issues with
19 respect to discovery and with respect to disclosures, the
20 Government has disclosed all materials that are required
21 under Rule 16. The Government has made further disclosures
22 because of the complexities of this case that include
23 statements from some individuals that were at the scene of
24 the homicide on August 12th, 2019. Additionally, the
25 Government has made disclosures of some co-conspirator

1 statements. However, *Bruton* does not -- again, is not an
2 end run around disclosure and requirements under Jencks and
3 other rules of discovery, so the Government would object to
4 disclosure at this point in time for *Bruton* purposes.

5 THE COURT: Ms. Elkins, any last comment?

6 MS. ELKINS: No, Your Honor.

7 THE COURT: Docket Numbers 89 and 90 are the
8 Government's motion for discovery directed to Defendant
9 Cutbank and Defendant Sumner, and they are identical.
10 There's no written response to them. I'm assuming, though,
11 Mr. Zayed, that you have seen it?

12 MR. ZAYED: Yes, I have, Your Honor.

13 THE COURT: Any objections?

14 MR. ZAYED: No objections, Your Honor. We
15 understand our obligations to the extent they apply.

16 THE COURT: Ms. Elkins, have you seen it? Docket
17 90?

18 MS. ELKINS: The Government's motion, Your Honor?

19 THE COURT: Yes.

20 MS. ELKINS: Yes, I have. And I have no
21 objections.

22 THE COURT: Okay. And we've already addressed the
23 expert disclosure issue, and the Government has indicated it
24 wouldn't object to modifying that to be 45 days for
25 case-in-chief disclosure and 15 days before trial for

1 rebuttals by either side thereto.

2 MS. AANSTAD: Yes, Your Honor.

3 THE COURT: Okay. That's all the discovery
4 motions, I believe. Have I missed any? I know I missed one
5 in the status conference, but I think I've got them all now.
6 Ms. Elkins?

7 MS. ELKINS: I don't believe so, Your Honor.

8 THE COURT: Mr. Zayed?

9 MR. ZAYED: I think you covered them all,
10 Your Honor. Thank you.

11 THE COURT: Ms. Aanstad?

12 MS. AANSTAD: I think you covered them.

13 THE COURT: Okay. Then before we get into the
14 evidentiary portion, the Docket Number 96, Defendant
15 Sumner's motion to sever has been withdrawn without
16 prejudice pending further prep prior to trial.

17 Mr. Zayed, Ms. Cutbank has a motion to sever at
18 Docket Number 82. Do you want to follow Ms. Elkins' lead?

19 MR. ZAYED: No, Your Honor. I would persist in
20 maintaining that motion because the issue that's
21 antagonistic here is using the confession of a co-defendant
22 at trial, which inexorably points the finger at Ms. Cutbank.
23 And so I don't believe that defenses -- I think the defenses
24 are antagonistic. I think the confessions of co-defendants,
25 which indirectly implicate -- I mean, *Bruton* stands for the

1 proposition that says, I, along with X, went and did this.
2 And as long as you redact -- put X instead of the person's
3 name, that's generally allowed. But I think that's not
4 proper here, because when you say I and X did something,
5 there's only one X, and that points inextricably and
6 inexorably to Ms. Cutbank, and I don't think that she
7 would -- because of the antagonistic defenses, I think that
8 this case needs to be severed such that Ms. Cutbank is not
9 facing, indirectly, out-of-court statements that are
10 implicating her, and I believe that's a due process
11 violation. So I persist in my motion to sever.

12 THE COURT: Ms. Aanstad?

13 MS. AANSTAD: Your Honor, I would rest on my
14 response in the Government's consolidated response in this
15 matter. I think -- I was taking a moment to think about all
16 of the statements in this case, and given the circumstances,
17 I think it's premature to rule on a motion to sever with
18 respect to each of the defendants. Additionally, as is
19 outlined in my response, simply because someone made a
20 statement does not automatically require severance. There
21 are curative instructions that can be provided, as well as
22 defense counsel has already pointed out there can be
23 sanitized statements that are provided to the jury. So the
24 Government's position in this case is that, first, that the
25 motion can be denied outright; alternatively, that it's

1 premature.

2 THE COURT: All right. Mr. Zayed, you're
3 submitting it on the four corners of Docket Number 82 or did
4 you want to brief it?

5 MR. ZAYED: My brief wouldn't be anything more
6 than what I provided the Court here.

7 THE COURT: Okay. All right. Okay. Then that
8 leaves Docket Number 87, Defendant Cutbank's motion to
9 suppress search and seizure. At the status conference prior
10 to this hearing at which counsel for all parties were
11 present, the search warrants that apparently that are at
12 issue are two warrants for Facebook accounts which are
13 subject to being submitted for four corners review.
14 However, even though there would be no testimony on it, you
15 did want to brief the Facebook warrants; right?

16 MR. ZAYED: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. ZAYED: On behalf of Ms. Cutbank, yes.

19 THE COURT: Okay. And then there's a search
20 warrant for a premises in the Cass Lake area issued or
21 executed apparently by the Leech Lake Tribal Police. That's
22 the third warrant -- search warrant subject to your motion;
23 correct, Mr. Zayed?

24 MR. ZAYED: That's correct, Your Honor.

25 THE COURT: Okay. And there -- Ms. Aanstad, there

1 will be one witness on that third warrant; right?

2 MS. AANSTAD: Correct, Your Honor.

3 THE COURT: Okay. And that will be who?

4 MS. AANSTAD: That is Sergeant Travis Hemp.

5 THE COURT: Hintz?

6 MS. AANSTAD: Hemp, H-e-m-p.

7 THE COURT: Hemp.

8 Docket Number 88 is Defendant Cutbank's motion to
9 suppress statements. However, Mr. Zayed, I understand
10 there's a record relative to that you want to make prior to
11 withdrawing it?

12 MR. ZAYED: Yes, Your Honor. The record is that
13 the Government has agreed not to use any statements in its
14 case-in-chief, however, it reserves the right to use such
15 statements for impeachment purposes should Ms. Cutbank
16 decide to testify at trial. Given those representations, we
17 withdraw that motion.

18 THE COURT: Ms. Aanstad?

19 MS. AANSTAD: Your Honor, that is correct. I just
20 want to clarify that it's any statements made to law
21 enforcement. There were two instances where statements were
22 attempted or law enforcement went and spoke with the
23 defendant, Defendant Cutbank, and in both of those, no
24 statements were obtained. So it is those two statements
25 that the Government is agreeing it will not use in its

1 case-in-chief, but there may be impeachment material should
2 we go to trial and the defendant testify.

3 THE COURT: Mr. Zayed?

4 MR. ZAYED: That is correct, Your Honor. By
5 "statements," I was definitely referencing the statements
6 made to law enforcement which would be subject to a motion
7 to suppress. That's correct.

8 THE COURT: Okay. All right. Docket Number 58 is
9 Defendant Sumner's motion to suppress statements -- or
10 statement, I guess. And it -- the motion papers identified
11 it as one made on August 19th, 2019. But it's been
12 clarified that it was actually shortly after midnight on
13 August 20th, 2019?

14 MS. ELKINS: Yes, Your Honor, in the early a.m.
15 hours.

16 THE COURT: Yeah.

17 MS. AANSTAD: Yes, Your Honor. It was between
18 2:30 and 3:00 a.m.

19 THE COURT: Okay. And one witness for that?

20 MS. AANSTAD: Yes, Your Honor.

21 THE COURT: And that would be who?

22 MS. AANSTAD: That is Sergeant Joseph Dejesus from
23 the Duluth Police Department.

24 THE COURT: All right. We might as well do the
25 admin stuff here. Mr. Zayed wants to brief the search

1 suppression issue; and then as it relates to the Facebook
2 warrants, I imagine he wants to brief the search suppression
3 as it relates to the Leech Lake warrant.

4 Ms. Elkins, you want to brief the suppression of
5 statements issue, I'm assuming?

6 MS. ELKINS: Yes, Your Honor.

7 THE COURT: Okay. Mr. Zayed, Ms. Elkins, is it
8 your intention to order a transcript or brief off the basis
9 of just today?

10 MS. ELKINS: I would order the transcript,
11 Your Honor, and we'd ask for a two-week transcript.

12 THE COURT: 14-day transcript? Okay. How long
13 after receipt of the transcript? Mr. Zayed?

14 MR. ZAYED: I think two weeks is sufficient,
15 Your Honor.

16 THE COURT: Ms. Elkins?

17 MS. ELKINS: That works for me, Your Honor.

18 THE COURT: And, Ms. Aanstad, how long after
19 receipt of the -- all the defense briefing?

20 MS. AANSTAD: Two weeks later, Your Honor.

21 THE COURT: All right. All right. Then are
22 there -- obviously there's some written exhibits relative to
23 the search warrant issues. Do you want to -- have you
24 shared those with Mr. Zayed?

25 MS. AANSTAD: Yes, Your Honor. If I may,

1 Your Honor, the Government has previously provided
2 Government Exhibits 1 through 4. The Government does have
3 an additional exhibit now, Government Exhibit 5. I would
4 note for the record that Government Exhibits 1 through 3
5 pertain to Defendant Cutbank's motion to suppress. Those
6 are the three search warrants; two Facebook, and one Leech
7 Lake Police Department premises warrant. My understanding
8 is that there is an agreement that those could be submitted
9 on the record.

10 Additionally, with respect to Ms. Sumner's motion,
11 Motion Number 58, the body camera, which is Government
12 Exhibit 4, and then a map, which is Government Exhibit 5,
13 those exhibits also are -- defense counsel is agreeing to
14 stipulate to, and so the Government would move to offer at
15 this time Government Exhibits 1 through 5.

16 THE COURT: Mr. Zayed, any objections to
17 Government Exhibits 1 through 3 as it relates to your motion
18 to suppress search?

19 MR. ZAYED: No objections, Your Honor.

20 THE COURT: Okay. Ms. Elkins, any objection to
21 Government Exhibits 4 through 5 as it relates to your motion
22 to suppress statements?

23 MS. ELKINS: No, Your Honor.

24 THE COURT: All right. Government Exhibits 1
25 through 5 are admitted for purposes of this hearing. I've

1 got them in advance.

2 MS. AANSTAD: Your Honor, I don't believe you have
3 Government Exhibit 5 or Government Exhibit 4, which was the
4 body camera, so if I can approach the Court?

5 THE COURT: Yeah. But I have 1 through 3 already?

6 MS. AANSTAD: Yes.

7 THE COURT: Yeah.

8 MS. AANSTAD: I have made copies.

9 THE COURT: Okay. All right. Are you going to be
10 publishing the body camera today during the hearing?

11 MS. AANSTAD: No, Your Honor.

12 THE COURT: Okay. Ms. Elkins, are you going to
13 need it?

14 MS. ELKINS: No, Your Honor.

15 THE COURT: Okay. All right. All right. Then
16 why don't we call Officer Hemp first.

17 MS. AANSTAD: Thank you, Your Honor. And if it's
18 all right, I'll stand at the podium?

19 THE COURT: Yeah.

20 Please face the courtroom marshal and be sworn.

21 THE COURTROOM DEPUTY: Please raise your right
22 hand.

23 (Witness Sworn.)

24 THE COURTROOM DEPUTY: Please state your full name
25 and spell your last name.

1 THE WITNESS: Travis James Hemp, H-e-m-p.

2 THE COURTROOM DEPUTY: Okay. Thank you.

3 THE COURT: Please have a seat. And then once
4 seated, please remove your mask so that the defendant may
5 avail herself of her full rights of confrontation.

6 Ms. Aanstad, you may inquire.

7 MS. AANSTAD: Thank you.

8 (Travis Hemp)

9 DIRECT EXAMINATION

10 BY MS. AANSTAD:

11 Q. Sergeant Hemp, where are you currently employed?

12 A. Leech Lake Tribal Police.

13 Q. How long have you been employed there?

14 A. Since 2005.

15 Q. In what capacity are you currently working with the
16 Leech Lake Police Department?

17 A. A police sergeant.

18 Q. How long have you been a sergeant?

19 A. Since 2017.

20 Q. Now, as a sergeant, describe your duties, please.

21 A. I also work the road, take calls. I also make sure the
22 guys get all their reports done and supervise all the
23 officers for two shifts.

24 Q. And do you work a particular shift when you are working
25 as a sergeant?

1 A. I work night shift.

2 Q. And what time is that night shift?

3 A. So I go to work at 6:30 p.m. and then get off at --
4 eleven and a half hours later.

5 Q. And have you been working that same night shift since
6 you became a sergeant?

7 A. Yes, for the most part. Sometimes it varies a little
8 bit, a couple hours here and there.

9 Q. Okay. Now, were you working during the evening into the
10 early morning hours of August 5th, 2019?

11 A. Yes.

12 Q. In working for the Leech Lake Police Department, what
13 are your jurisdictional boundaries on where you can patrol?

14 A. The whole reservation, which is approximately
15 1,100 square miles.

16 Q. Now, while you were working on August 5th of 2019, were
17 you in a squad car?

18 A. Yes.

19 Q. Do you have any partner that rides along with you?

20 A. No. I -- we all have our own squads.

21 Q. Okay. And you're in uniform when you are in your squad?

22 A. Correct, yes.

23 Q. Did you receive a call or overhear a dispatch to the
24 Cedar Lakes Casino in the early morning hours of August 5th,
25 2019?

1 A. Yes.

2 Q. Describe what you heard with the dispatch.

3 A. We were dispatched that a male -- surveillance and
4 security called us and stated that a male dropped two 57
5 rounds -- .357 rounds in the front entryway.

6 Q. And when you are in your patrol car, can you hear all
7 dispatch calls?

8 A. For the most part, correct.

9 Q. Is someone specifically assigned, an officer
10 specifically assigned, or is it whoever is closest?

11 A. Who's ever closest.

12 Q. Now, you said you heard from the security. That would
13 be from the Cedar Lakes Casino and Hotel?

14 A. Correct. They are the ones who call our dispatch.

15 Q. Now, if you can, for the Court, please describe the
16 Cedar Lakes Casino and Hotel.

17 A. It's the -- well, that was before. It just opened. It
18 was a soft grand opening. So it wasn't -- it was pretty
19 much brand new. It was just getting opened. And it's right
20 there on -- right off Highway 2 right in Cass Lake. It's a
21 hotel -- it's a four-story hotel with the casino attached.

22 Q. And when you say it was a soft opening, it was during
23 that time, August 5th, 2019?

24 A. Correct, yes.

25 Q. And so there was a dispatch about ammunition that was

1 found by security?

2 A. Yes.

3 Q. And what did you do when you overheard that as you're in
4 your squad car?

5 A. We were requested to respond to the back entryway, the
6 employee entrance, to meet with security, and that's where
7 we responded.

8 Q. Were you the first officer on scene?

9 A. No, I was not.

10 Q. How many officers responded to that ammunition call?

11 A. Two at that time because we only had two in the area.

12 Q. And so yourself being one of them?

13 A. Correct.

14 Q. Who else responded with you?

15 A. Officer Oelke.

16 Q. And can you spell Oelke for the record, please?

17 A. O-e-l-k -- I'm trying to think -- -e? He hasn't worked
18 for us a couple years now.

19 Q. Okay.

20 A. But, no, I can't recall it.

21 Q. Thank you. Now, once you arrived, so you went to that
22 back door -- is that correct? -- of the -- that security
23 directed you to?

24 A. Correct.

25 Q. And what happened once you arrived there?

1 A. They met with security, and they explained to us at that
2 time that -- what they found. And that surveillance was
3 still watching the male, and he was in the food court at
4 that time.

5 Q. Now, what was going to be your role in the investigation
6 since Office Oelke was there as well?

7 A. Just supervise and make sure everything was being done
8 and assist him if he needed any assistance.

9 Q. What happened -- let me back up for a second. Do you
10 remember what time it was in the morning hours of August 5th
11 that you arrived at the casino?

12 A. Right around 2:00 a.m.

13 Q. Now, what did you do once you learned information that
14 that male individual that security had been following, that
15 he was in the food court? What did you do?

16 A. We went out and made contact with the male.

17 Q. And that's both you and Officer Oelke?

18 A. Yes.

19 Q. What happened when you made contact with that male?

20 A. We made contact with him, advised him of what we had,
21 and then we escorted him to a private room so we could talk
22 to him because it's noisy in the casino and they have
23 separate, like, conference rooms. So we brought him in
24 there, and that's where we conducted our investigation with
25 him.

1 Q. Now, ultimately was that male individual, were you able
2 to identify where he had come from in the hotel?

3 A. Later they told us. Surveillance advised us that he
4 came from Room 445.

5 Q. And how long were you at the Cedar Lakes Casino that
6 evening or in the early morning hours?

7 A. I believe I arrived at the casino right around
8 2:00 a.m., and I left the casino that morning. I don't
9 remember. It was probably 10:00 a.m. to probably 11:00 a.m.

10 Q. Okay. So you were speaking with the male individual in
11 a conference room or in a room that security had provided to
12 you; is that correct?

13 A. Correct.

14 Q. And the casino security, were they involved in the
15 investigation as well?

16 A. They just stand by. They don't really -- a lot of our
17 information we get is from the surveillance footage.

18 Q. And as your investigation continued dealing with this
19 male, you learned that he came from Room 445?

20 A. Correct.

21 Q. And that's within the hotel?

22 A. Yes.

23 Q. That's connected to the casino?

24 A. Correct.

25 Q. Now, what did you do once you learned that the male had

1 come from Room 445?

2 A. At that time during the investigation, we also found
3 other narcotics on the male, which led to his arrest. So at
4 that time, we were dealing with that incident, and security
5 was asking for assistance because they wanted to kick
6 everyone out of the room in 445 due to their policies.

7 Q. And the policies being what?

8 A. No firearms, no drugs on the property.

9 Q. And so security indicated to you and Officer Oelke that
10 they were going to remove individuals from Room 445?

11 A. Correct.

12 Q. And did you, in any way, assist security with dealing
13 with evicting or kicking out people from Room 445?

14 A. They asked me to go up there for assistance due to the
15 fact that there was possibly maybe a firearm in the room and
16 they just wanted me up there, so I followed them up there in
17 case things got out of control.

18 Q. So when you say that there might have been a firearm,
19 why did security believe that there might be a firearm in
20 the hotel room?

21 A. Because the male Johnson we had contact with earlier had
22 ammunition on him.

23 Q. Now, you talked a little quickly, but I believe you said
24 that a male Johnson?

25 A. Yeah.

1 Q. And so you were able to identify and ultimately arrest
2 the individual that you and Officer Oelke first started
3 dealing with; is that correct?

4 A. Correct.

5 Q. And that individual was Molandas Johnson?

6 A. Correct.

7 Q. Now, you didn't know Molandas Johnson prior to that
8 night, did you?

9 A. No.

10 Q. And when security -- after a period of time, casino
11 security decided that they were going to go to Room 445?

12 A. Correct.

13 Q. And you went along with?

14 A. Yes.

15 Q. Was there any other officers that went along?

16 A. No.

17 Q. And why did you go along then to Room 445?

18 A. To assist security with making sure -- to kick the -- if
19 there was anyone in the room, to remove them. And they
20 stated there should be no one else in the room.

21 Q. Now, at the time -- at the time that you went to Room
22 445, do you wear a body camera?

23 A. I do, yes.

24 Q. Was your body camera operational at that time?

25 A. No, not at that time.

1 Q. Why not?

2 A. The battery died.

3 Q. How long had you been at the casino at that point when
4 you went to Room 445?

5 A. Approximately an hour and a half.

6 Q. So it was about 3:30 a.m. that you went to Room 445?

7 A. Correct.

8 Q. What happened when you and security went to Room 445?

9 A. They knocked on the door, and they were unable to get
10 anyone to come to the door. And at that time, they opened
11 the door and they went in.

12 Q. And what did you do?

13 A. I stood out the door.

14 Q. Now, did you have your gun drawn?

15 A. No.

16 Q. Why didn't you go inside?

17 A. Why didn't I go inside?

18 Q. Right.

19 A. Because normally security goes in. If there was no one
20 in there, then that's it. That's what we do.

21 Q. Okay. What happened when security went into the hotel
22 room?

23 A. They advised me that there was drug paraphernalia all
24 over the countertop and then the table.

25 Q. If you can for the Court, please describe what Room 445

looks like at the Cedar Lakes Casino.

A. When you first walk in the hotel room -- it's a suite.

So when you first walk in, there's -- right to the right area, there's like a kitchen area and it's got a table. And then there's like a full-size fridge and a sink. And to the left of that is a couch -- two couches, I believe, and then there's a fireplace and then there is a door going out to the balcony. And then beyond that, if you keep going just straight as you come in, that would be where the bedroom door was.

Q. And there's a door between the bedroom and the living area of this suite?

A. Correct, yes.

Q. And were you able to -- as you're standing in the doorway, are you looking into the hotel room?

A. Correct.

Q. Are you able to see anything as security is telling you that there's paraphernalia?

A. Yes, I could see the stuff that was on the table on the right side coming in just because they were pointing it out to me.

Q. And that would be the kitchen table?

A. Correct, yes.

Q. And what did you see on the table that looked like paraphernalia to you?

1 A. If I recall, I believe it was some gloves and then some
2 tinfoil and some just miscellaneous stuff.

3 Q. What happened -- at that -- well, let me ask: At that
4 point in time when casino security was telling you what they
5 were seeing and you could look in and see it, what did you
6 do?

7 A. Well, at that time I was -- they -- at -- once they
8 pointed that out, they went and checked the bedroom, the
9 back bedroom. And that's when they found a female -- or a
10 male and a female in the back bedroom.

11 Q. Had you crossed the threshold and were you in the hotel
12 room at that point in time?

13 A. Not until they found the male and the female in the
14 bedroom that were unresponsive.

15 Q. And so explain that a little bit. What did casino
16 security find?

17 A. They found a female laying in a bed and then a male at
18 the end of the bed, and they were unable to get them to
19 respond or wake up.

20 Q. And at that time, you were still outside the hotel room?

21 A. Correct.

22 Q. What did you do -- well, casino security relayed that
23 information to you?

24 A. Yep.

25 Q. And what did you do in response to that?

1 A. I went in to see if I could assist them medically with
2 it because I'm a first responder.

3 Q. And what happened? You made entry into the casino --
4 or, excuse me, into the hotel room?

5 A. I made entry right straight into the bedroom at that
6 time.

7 Q. And what happened once you got into the bedroom?

8 A. When I was trying to re -- help get the male and female
9 to respond, I noticed there was drug paraphernalia on the
10 floor, a hypodermic needle and a glass smoking device.

11 Q. And what did you do after you made those observations?

12 A. I continued with the medical part. I was able to get
13 both the male and the female to respond with a sternum rub.

14 Q. On both of them?

15 A. Correct.

16 Q. And what happened once you were able to arouse both the
17 male and female?

18 A. Security advised them they had to leave. I only had
19 contact with the male at that time and security dealt with
20 the female and advised them they had to leave at that time.

21 Q. And what happened to that male and female?

22 A. They both left.

23 Q. Left the casino?

24 A. I believe so, yes, because I stayed -- at that time, I
25 stayed in the room and contacted an investigator.

1 Q. Why did you stay in the room and contact an
2 investigator?

3 A. Just due to the drug paraphernalia that I seen.

4 Q. Why was that critical that you contact the investigator?

5 A. To see if they wanted us to hold the room for a search
6 warrant or not.

7 Q. So let's talk again about the paraphernalia that you had
8 seen. It was on the kitchen table when you first walked in?

9 A. Correct.

10 Q. And that was something that you could see as security
11 was walking through the door?

12 A. Correct.

13 Q. And you were still outside?

14 A. Yes.

15 Q. You also said that you saw a hypodermic needle on the
16 floor next to the bed?

17 A. Correct, yes.

18 Q. And did you pick up anything while you were in the -- in
19 the casino -- or, excuse me -- in the hotel?

20 A. No.

21 Q. And did you open up any bags?

22 A. No.

23 Q. Did you search any of the drawers of any of the -- any
24 of the furniture?

25 A. No.

1 Q. So you contacted an investigator?

2 A. Correct.

3 Q. And what did that investigator indicate to you?

4 A. They had me at that time stay in the room for evidence
5 purposes, and they were going to write a search warrant for
6 the room.

7 Q. And what do you mean stay in the room for evidence
8 purposes?

9 A. They wanted -- they didn't want anyone going or coming
10 from the room so that nothing could be tampered with.

11 Q. Was casino security there as well?

12 A. No. Once I was advised we were going to do a search
13 warrant, I had security leave the room.

14 Q. Did you take part in the drafting of the search warrant?

15 A. I did not, no.

16 Q. Do you know who drafted the search warrant?

17 A. Investigator Pamela Hodgden.

18 Q. And she's with the Leech Lake Police Department?

19 A. Yes.

20 Q. Did you speak with her as she prepared a search warrant?

21 A. She asked me to fill her in. She made a phone call to
22 me, and I advised her what we had and what was found and --
23 located by myself and security.

24 Q. And that that was found and located is what you've
25 previously described as you were walking into the bedroom?

1 A. Correct, yes.

2 Q. Now, the male and female that was located -- or that
3 were located in the bedroom portion of that suite, did
4 you -- were you able to identify those two individuals?

5 A. The one we identified by is a Nathaniel -- or Nathan
6 Knotts, K-n-o-t-t-s, and then the other one was actually
7 identified by security. It was a female, and it was Alexa
8 Wenell I believe she identified herself as.

9 Q. Did you later learn that Alexia Wenell actually went by
10 another name?

11 A. Correct.

12 Q. And what was that?

13 A. Cutbank would be her last name.

14 Q. Were you familiar with either Nathaniel or Nathan Knotts
15 or Alexia Wenell or Alexia Cutbank?

16 A. I knew of them and names -- not the male. The male was
17 new to me. But the female, I have heard her name, and she's
18 been in the area.

19 Q. And that's as of August 5th, 2019, you'd heard of her?

20 A. Correct, yes.

21 Q. Had you ever had any interactions with her?

22 A. I don't recall.

23 Q. Now, while waiting for the search warrant, you stayed in
24 Room 445?

25 A. Correct.

1 Q. Did you search anything while you were waiting for law
2 enforcement -- or excuse me -- while you were waiting for
3 the investigator?

4 A. No.

5 Q. How long did you have to wait?

6 A. I don't believe they showed up until around 9:00 a.m. or
7 close to there.

8 Q. And during that time, you just stayed in the hotel room?

9 A. Correct.

10 MS. AANSTAD: Thank you, Your Honor. I have no
11 further questions.

12 THE COURT: Ms. Reuter.

13 MS. REUTER: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MS. REUTER:

16 Q. Good afternoon, Sergeant Hemp. I'm Donna Reuter. I'm
17 going to ask you a few questions.

18 So on August 5th, 2019, around 2:00 a.m., you
19 responded to a call at the Cedar Lakes Casino and Hotel;
20 correct?

21 A. Correct, yes.

22 Q. And that's in Cass Lake, Minnesota, 6280 Upper Frontage
23 Road?

24 A. Yes, correct.

25 Q. And you met hotel security regarding a male that had

1 dropped .357 ammo?

2 A. Correct.

3 Q. And that male was Molandas Johnson; correct?

4 A. Correct.

5 Q. And hotel security had also indicated to you that they
6 were surveying a Room 445 at the hotel?

7 A. Correct.

8 Q. And hotel security relayed to you that there were people
9 going in and out of that room. That would have been
10 August 4th, that evening, into the August 5th a.m. hours?

11 A. Correct.

12 Q. So one of those individuals was Molandas Johnson;
13 correct?

14 A. Correct.

15 Q. And then you accompanied security up to the room, and
16 you -- as you were making your way up, you -- they also
17 identified for you a Mia Sumner; is that right?

18 A. That left the room, yes.

19 Q. That left the room. Okay. So that was --

20 A. Yes.

21 Q. So you spoke with Mia Sumner; is that right?

22 A. Correct.

23 Q. And she relayed to you that there were others in the
24 room?

25 A. Yes, correct.

1 Q. And one of those others was a Montana Cutbank; is that
2 correct?

3 A. She said a friend at the time I believe.

4 Q. Okay.

5 A. I don't think she gave a name.

6 Q. Also, in your report, I believe, you may have also
7 spoken with a Montana Cutbank who came out of the room. Do
8 you recall that?

9 A. The Montana Cutbank that I spoke with was the one that
10 was with Molandas Johnson on the floor of the casino
11 earlier.

12 Q. Okay.

13 A. And that's why I recognized him, and they told me that
14 it was him by the garbage can outside.

15 Q. Okay. Thank you for that clarification.

16 So you made your way up to the room, and I believe
17 you testified it was around 3:30 a.m. by that point --

18 A. Correct.

19 Q. -- that you reached the door?

20 And you entered the room based on security's
21 request to render medical aid?

22 A. Correct, to help medical.

23 Q. And the -- you identified two people sleeping in one of
24 the bedrooms of the suite?

25 A. Correct, yeah.

1 Q. And neither were responsive at that time?

2 A. Correct.

3 Q. You attempted to rouse them or waken them?

4 A. Yes.

5 Q. How did you do that?

6 A. Sternum rub. It's a technique used. You can put your
7 knuckles on their sternum and it is pain compliance and
8 finds out if they are -- particularly at that time it was
9 either a possible OD or, you know, alcohol impairment or
10 something.

11 Q. Okay. How long approximately did that take to wake them
12 up?

13 A. If I recall, I had to give them a couple sternum rubs.

14 Q. So if you can approximate a time maybe, if possible?

15 A. Usually -- a sternum rub is usually like three, four
16 seconds long.

17 Q. And you had also called EMTs or medical -- other medical
18 aid; is that right?

19 A. Yes, along with the ambulance.

20 Q. So you later were able to identify the woman in the room
21 as Alexia Cutbank?

22 A. Correct.

23 Q. Do you recall how you were able to determine her name?

24 A. An investigator showed me an ID, a photo ID with -- that
25 came off of -- that was on the bed where she was at and then

1 had me look at the photo.

2 Q. So there were -- so who exactly found the ID?

3 A. Investigator Hodgen, I believe.

4 Q. And was he part of the hotel security, or who exactly is
5 that?

6 A. It was the investigator doing the search warrant at the
7 time once the search warrant was filed or signed by the
8 judge.

9 Q. Okay. So you identified her after the warrant was
10 executed?

11 A. Correct.

12 Q. And -- and how -- how did they do that?

13 A. They had a search warrant, so they searched the room
14 what was on their search warrant that they had signed, and
15 they found her ID.

16 Q. So no one looked in any of the -- any of the bags that
17 were in the room prior to that -- to that search warrant
18 being executed?

19 A. No.

20 Q. Do you recall there was a black and white Adidas bag on
21 the bed next to Ms. Cutbank?

22 A. I don't recall that.

23 Q. Okay. And there were other bags in the room. Do you
24 recall, like, other backpacks or purses?

25 A. There were miscellaneous bags in the room, correct.

1 Q. And you were alone in the room after hotel security had
2 left?

3 A. Correct.

4 Q. So, let's see, you had noticed drug paraphernalia within
5 plain view when you entered the room?

6 A. Correct.

7 Q. I believe at one point you were advised that the freezer
8 door in the room -- hotel room was open. Do you recall
9 that?

10 A. I was advised by security, yes.

11 Q. Did you look at that refrigerator door yourself?

12 A. They opened it and I was standing there. Security
13 opened it.

14 Q. Okay. So they opened it. Did you see what was
15 inside --

16 A. I did not.

17 Q. -- the refrigerator?

18 Okay. So it was not open at the time. They had
19 to physically open the door?

20 A. The freezer door?

21 Q. The freezer door.

22 A. That the security advised me what was -- what they
23 found, and they said that the door was open. That's what
24 they advised me, because they were checking for clean -- for
25 the cleaning personnel to come in. They have to make sure

1 it's safe for the cleaning personnel.

2 Q. So just to be clear, they advised you that the door was
3 open?

4 A. I believe so, yes.

5 Q. And they opened the door further to inspect the inside
6 of the freezer?

7 A. Yes.

8 Q. And did you notice anything in the freezer at that point
9 in time?

10 A. A bag.

11 Q. Okay.

12 MS. REUTER: No further questions. Thank you.

13 THE COURT: Any redirect?

14 MS. AANSTAD: Nothing, Your Honor.

15 THE COURT: Ms. Reuter, any reason the witness
16 can't be excused?

17 MS. REUTER: No, the witness can be excused.

18 Thank you.

19 THE COURT: Ms. Aanstad?

20 MS. AANSTAD: No, Your Honor.

21 THE COURT: After you wipe down the area, you can
22 change the cover on the microphone and then you are free to
23 leave. Thank you.

24 MS. AANSTAD: Your Honor, if I may, I'm going to
25 turn on the overhead projection so I can utilize it.

1 THE COURT: Ms. Aanstad, could you put a new cover
2 on the mic for me?

3 MS. AANSTAD: Yes, Your Honor. I will do it in
4 one moment.

5 Your Honor, if I may, the Government would call
6 Sergeant Joseph Dejesus.

7 THE COURT: Please face the courtroom deputy and
8 be sworn.

9 (Witness Sworn.)

10 THE COURTROOM DEPUTY: Please state your full name
11 and spell your last name.

12 THE WITNESS: Joseph Dejesus, D-e-j-e-s-u-s.

13 THE COURT: Please have a seat. And then once
14 seated, please remove your mask.

15 Ms. Aanstad, you may inquire.

16 MS. AANSTAD: Thank you. One moment, Your Honor.

17 **(Joseph Dejesus)**

18 **DIRECT EXAMINATION**

19 BY MS. AANSTAD:

20 Q. Sergeant Dejesus, where are you currently employed?

21 A. With the Duluth Police Department.

22 Q. How long have you been with the Duluth Police
23 Department?

24 A. 13 years.

25 Q. How long have you been a sergeant?

1 A. Approximately four years.

2 Q. Do you have any other prior law enforcement experience?

3 A. No, I don't.

4 Q. As a sergeant with the Duluth Police Department, what
5 hours do you typically work?

6 A. 5:00 p.m. to 5:00 a.m.

7 Q. Has that been your routine for the last four years since
8 you've been a sergeant?

9 A. The last three years.

10 Q. Excuse me. Three years.

11 And were you working during the evening into the
12 morning hours, so that 5:00 p.m. to 5:00 a.m., on August --
13 into August 20th, 2019?

14 A. I was.

15 Q. And at that time, you were a sergeant?

16 A. I was.

17 Q. Now, do you, with the Duluth Police Department, have a
18 particular area that you patrol?

19 A. I'm currently assigned to the west -- or the western
20 districts for the night shift patrol.

21 Q. And what does that mean, the western districts?

22 A. West side of town.

23 Q. All right. And on the west side of town, there is
24 Lincoln Park; is that correct?

25 A. Correct.

1 Q. Now, as a sergeant with the Duluth Police Department,
2 you have a patrol unit?

3 A. I do.

4 Q. And do you regularly patrol the streets as well?

5 A. I do.

6 Q. And you're in uniform?

7 A. I am.

8 Q. Now, let's talk specifically about August 20th of 2019.
9 Were you in the Lincoln Park area in the early morning hours
10 shortly after midnight?

11 A. I was.

12 Q. And had you responded to a call in that area?

13 A. Yes.

14 Q. What was the nature of that call?

15 A. We were investigating a drive-by shooting.

16 Q. And when you say we were investigating a drive-by
17 shooting, who is that?

18 A. Myself and other officers assigned to the -- to the
19 patrol crew.

20 Q. How long -- well, let me back up for a second. When you
21 say that you were investigating a drive-by shooting,
22 specifically where was that area at?

23 A. It was at the -- near the intersection of 24th Avenue
24 West and West 3rd Street.

25 Q. Now, on your screen I'm going to show you Government

1 Exhibit 5. It's already been admitted into evidence. Do
2 you recognize this area?

3 A. I do.

4 Q. And what is this area?

5 A. That's a -- the intersection of 24th Avenue West and
6 West 3rd Street in the Lincoln Park neighborhood of Duluth.

7 Q. Now, I think your screen has writing capabilities and
8 you can mark for the Court the intersection that you are
9 talking about.

10 A. Is it a touch screen?

11 Q. It is.

12 A. This is approximately the area that we were focused on
13 during our investigation (indicating). And that's the area
14 of that previously-mentioned intersection (indicating).

15 Q. Now, that area, as you were investigating -- again, how
16 long were you at that area investigating that drive-by
17 shooting?

18 A. Approximately an hour and a half.

19 Q. And as part of that investigation, there were multiple
20 officers at the scene?

21 A. There were.

22 Q. And you all were doing work with respect to that
23 drive-by shooting?

24 A. Correct.

25 Q. Now, at approximately 2:30 or slightly before 2:30 a.m.,

1 were you wrapping up that drive-by shooting scene?

2 A. I was.

3 Q. And by wrapping up that scene, what were you doing?

4 A. We were taking down the crime scene tape. I was giving
5 officers tasks to complete up that investigation so they
6 could clear from the area and continue on with their shift.

7 Q. And you were one of the supervising officers at the
8 scene?

9 A. I was.

10 Q. And so you were assigning tasks to other officers?

11 A. Yes.

12 Q. And there had been crime scene tape that had been put up
13 around that intersection?

14 A. Yes.

15 Q. Now, so shortly before 2:30 a.m., you were about ready
16 to clear that scene?

17 A. I was.

18 Q. And was there any observations that you made in that
19 area as you were standing there?

20 A. Yes. As I was closing that scene down and taking the
21 tape down, I observed a -- what appeared to me to be --
22 appeared to me to be about a 15-year-old female standing at
23 the southwest corner of the intersection inside the bus
24 stop.

25 Q. So if you can on Government Exhibit 5, can you mark

1 where that bus stop is?

2 A. That would be right there (indicating).

3 Q. Now, if you can, explain to the Court what type of bus
4 stop that is?

5 A. It's a clear glass enclosure, a little vestibule type
6 thing with a bench in it.

7 Q. Was there anyone else at the corner of 24th and 3rd at
8 that time?

9 A. No.

10 Q. How many officers were in that area still?

11 A. I would -- if I had to guess, four or five maybe. I'm
12 not 100 percent on how many were left.

13 Q. Okay. You were getting ready to clear the scene?

14 A. Correct.

15 Q. Why did that individual catch your attention who was
16 standing in the bus stop?

17 A. At 2:00 in the morning, high-crime neighborhood, she
18 appeared to be underage. Just seemed out of place. I was
19 worried about her safety.

20 Q. Now, you'd been at that area at that intersection for
21 about an hour and a half at that point in time?

22 A. Correct, back and forth, yeah.

23 Q. And back and forth, what do you mean by that?

24 A. That intersection and kind of the -- we had a couple
25 different scenes on that shooting.

1 Q. Okay.

2 A. So I was going between the different locations.

3 Q. And when you say going between those different
4 locations, would you go in your squad car or would you go --

5 A. Yes, in my squad car.

6 Q. Okay. And you'd been to that intersection, though,
7 multiple times in that hour and a half?

8 A. Yes.

9 Q. Had you ever seen that female at that bus stop during
10 that time that you were at the scene?

11 A. No, I didn't.

12 Q. And what did you do once you saw that female in the bus
13 stop or vestibule?

14 A. Approached her on foot to check on her.

15 Q. Why?

16 A. Again, late at night, high-crime area. She appeared to
17 be very young.

18 Q. Did you recognize the female?

19 A. No, I did not.

20 Q. Did the female -- when you -- so you approached the bus
21 stop?

22 A. I did.

23 Q. On foot?

24 A. Yes.

25 Q. At that time, where was your squad parked?

1 A. On the photo here, I was parked just west of the bus
2 stop. Kind of right about by that little line there
3 (indicating) on the shoulder of the road.

4 Q. And what did you -- explain your approach to the bus
5 stop.

6 A. How I approached the bus stop?

7 Q. Right.

8 A. I -- again, I was -- I was actually removing crime scene
9 tape at the time from the intersection, and I just -- I
10 walked up to it on foot.

11 Q. And was there anyone else besides this female in the bus
12 stop?

13 A. No.

14 Q. What was the demeanor of the female at the time?

15 A. She appeared frightened or nervous. She was just
16 constantly looking around, looking over her shoulders, kind
17 of moving her arms about, clenching her hands, and her
18 entire body appeared to be trembling.

19 Q. What did you think?

20 A. My first impression was that she was under the influence
21 of possibly methamphetamine.

22 Q. Were you concerned about her at that time?

23 A. I was.

24 Q. Why?

25 A. Young female under the influence out on the street at

1 2:00 in the morning, I was worried for her safety.

2 Q. Now, as you approached her, did you interact with her,
3 make -- or contact her verbally?

4 A. I did.

5 Q. What did you do?

6 A. Well, I initial- -- I went up to check on her. I also
7 had asked her if she'd seen anything related to what we
8 were -- we were investigating, and she hadn't. She -- she
9 inquired about what all the police were doing there. And
10 then, again, she just -- she kept, again, looking over her
11 shoulder, looking around. So I asked her if she wanted to
12 sit in my squad car, and she did.

13 Q. Why did you ask her to sit in your squad car?

14 A. She looked scared. I thought that might put her at ease
15 a little bit. She looked like she was looking for -- the
16 way she kept looking over her shoulders, I didn't know if
17 she thought there was somebody coming after her.

18 Q. Did the female agree?

19 A. She did.

20 Q. Now, at that point in time, had you identified who the
21 female was?

22 A. I had not.

23 Q. And, again, you'd never seen her before?

24 A. No, not that I can recall.

25 Q. You didn't know name, age --

1 A. No.

2 Q. -- where she was from?

3 A. No.

4 Q. Did the female agree to go to your squad car?

5 A. She didn't verbally agree. But when I asked her to have
6 a seat in my squad car, she just quickly walked directly
7 towards it.

8 Q. Did you explain why you wanted her to sit in the squad
9 car?

10 A. I did not.

11 Q. So the -- this female went to your squad car?

12 A. She did.

13 Q. And explain what happened when you got to your squad car
14 with her.

15 A. So I opened the door. She had a seat in the back. I
16 closed the door and completed some other tasks that I was
17 doing related to the original investigation as far as just
18 giving out assignments, et cetera, throwing some garbage
19 away, and then I reapproached the squad car to speak with
20 her.

21 Q. When you had her sit in your squad car, where did she
22 sit in your squad car?

23 A. She sat in the rear driver's side.

24 Q. Did you -- did you search her before putting her in the
25 back of your squad car?

1 A. I did not.

2 Q. Why not?

3 A. I had no reason to. I didn't believe she was involved
4 in any type of criminal activity. I wasn't able to
5 articulate that she would have anything on her or any
6 weapons.

7 Q. And when you placed her into the back of the squad car,
8 you said you shut the door?

9 A. I did.

10 Q. Did you explain to her at that point in time why she was
11 in the back of your squad car?

12 A. I did not.

13 Q. What was your plan? What were you going to do with this
14 girl in the back of the squad car?

15 A. Like I said, I initially thought she was 15, 16 years
16 old. Needed to figure out where she needed to be. I
17 thought she was possibly under the influence of
18 methamphetamine, so I needed to find a safe place for her to
19 go.

20 Q. You said you finished some tasks and then went back to
21 your squad car?

22 A. Yes.

23 Q. What happened when you went back to your squad car?

24 A. I began asking her what she was doing in the
25 neighborhood, who she was. She was being very vague with

her answers, really not telling me much.

And I asked her -- I asked her about drug use. She admitted to using methamphetamine a few days prior, and that at one point she said she was trying to get back to Red Lake. When I asked her where she was currently, she wasn't able to tell me.

I had mentioned -- I told her where she was. She was in Duluth. I asked if she knew anybody in the area. She said she did not. And then at one point in our conversation, I had asked her how she got to Duluth, and she said she stole a vehicle.

Q. Now, you wear a body camera; is that correct?

A. I do.

Q. And you have the ability to turn it on and off?

A. I do.

Q. And that evening in those early morning hours of August 20th, 2019, were you wearing a body camera?

A. I was.

Q. Now you've had an opportunity to review what's been marked and offered as Government Exhibit 4. That is body camera video; is that correct?

A. Correct.

Q. And you had approximately a 4-minute-and-48-second conversation with the woman or the female that you found in the bus stop?

1 A. Correct.

2 Q. And that body camera video captures from the moment that
3 you went back to your vehicle; is that correct?

4 A. Correct.

5 Q. And, to be clear, back to your vehicle after she --
6 after the female had already been placed in the back of the
7 vehicle?

8 A. Yes.

9 Q. And at that time when you put her into the back of the
10 vehicle, she wasn't in custody?

11 A. She was not.

12 Q. Had you planned on taking her to the jail?

13 A. No.

14 Q. Had she committed any crime at that point in time?

15 A. No.

16 Q. Now, during that conversation, after she indicated that
17 she had stole a car, did she provide further information as
18 you were trying to talk to her about why she was in Duluth?

19 A. She did.

20 Q. What did she tell you?

21 A. Well, she had -- she had said she stole a car, and then
22 I asked her about that. And she eventually said she stole
23 it from Fat Back and that she had shot him.

24 Q. What did you do once you heard that information from the
25 female?

1 A. Then at that point, I removed her from the vehicle and
2 patted her down to see if she had any weapons on her.

3 Q. Why did you do that?

4 A. She had told me she didn't, but she's kind of making
5 some strange statements there, so I thought, so I wasn't
6 sure. I took her out just to make -- for safety just to
7 make sure she didn't have anything.

8 Q. Did you believe this female as she was telling you about
9 shooting someone?

10 A. I did not.

11 Q. Why not?

12 A. I believed it was kind of just her paranoia, kind of a
13 meth-induced paranoia. It just -- I was looking at a
14 younger female there, and I just wasn't buying the
15 statements. I hadn't heard -- typically if there's a --
16 there's a homicide in northern Minnesota with outstanding
17 suspects, we're going to get a cops alert or a BOLO alert on
18 our squad computers. I just hadn't heard about anything
19 like that occurring.

20 Q. About a murder that occurred at Red Lake?

21 A. Yes.

22 Q. Now, what happened after -- did you find any weapons on
23 this woman?

24 A. I did not.

25 Q. Did you ask the female her name?

1 A. I did.

2 Q. And she provided you a name?

3 A. She gave me the name of Mia Sumner.

4 Q. Were you familiar with a Mia Sumner?

5 A. No.

6 Q. And what did you do after you took Mia Sumner out of
7 your vehicle?

8 A. I requested another officer that was on scene to
9 transport her to the hospital as I believed she was under
10 the influence of methamphetamine.

11 Q. And why transport to the hospital then?

12 A. Just I didn't know at that point where -- where --
13 excuse me. Pardon me. I didn't know at that point where I
14 was going to take her, whether it was going to be returning
15 home, you know, to a juvenile facility, or what. But
16 wherever I was going to take her, I needed her to be
17 medically cleared before I brought her there, just to make
18 sure that medically she was okay, that she was safe.

19 Q. And, again, as you're speaking with this female that's
20 identified herself as Mia Sumner, you thought she was a
21 juvenile female?

22 A. I did, yes.

23 Q. And would you treat a juvenile differently than if this
24 would have been an adult female?

25 A. Yes.

1 Q. Explain.

2 A. Any juvenile facility I bring her to -- or I -- any
3 juvenile facility we bring a juvenile to, if they appear to
4 be under the influence of drugs or alcohol, they are going
5 to want -- the facility will want that juvenile medically
6 cleared first. They don't want to take on that liability.
7 They want to make sure that the juvenile is stable before
8 they are brought inside.

9 Q. And let me ask another question with respect to why
10 didn't you let -- even if you thought she was a juvenile
11 female that was under the influence of methamphetamine, why
12 didn't you just let her go?

13 A. I'm not going to let a juvenile female just walk away in
14 the middle of the night. I worry about her safety,
15 especially in that area. Kind of in that vicinity, we have
16 another facility in town called the Sol House for at-risk
17 females, females at risk of -- at risk or victims of human
18 trafficking. We frequently have runaways from that
19 facility, and I didn't know if she was potentially coming
20 from there. Either way, it's 2:00 in the morning with a
21 young female. I wouldn't feel comfortable sending her
22 walking on the streets.

23 Q. What if you would have believed that she was a
24 25-year-old female?

25 A. If she is under the influence of meth or if she is

1 intoxicated to where she can't care for herself, I'm still
2 going to -- I'm going to assess that. If I feel that she
3 can't care for herself, I would have done the same thing,
4 take her to the hospital to be medically cleared or to sober
5 up.

6 Q. Now, the woman -- or the female that identified herself
7 as Mia Sumner hadn't committed a crime on August 20th, 2019?

8 A. Correct.

9 Q. Yet you were going to have an officer take her to the
10 hospital?

11 A. Correct.

12 Q. Now, before we talk further, while you were talking to
13 her in that little more than four minutes, what was her
14 demeanor like?

15 A. Just seemed very nervous, constantly looking around.
16 Seemed to be just her arms were moving around. She was
17 clenching her fists. She didn't seem to be in control of
18 her motor movements.

19 Q. Did she appear to be tracking with the questions that
20 you were asking?

21 A. She did.

22 Q. And she responded appropriately when you asked her what
23 her name was?

24 A. She did.

25 Q. Now, after you called the other officer over to take the

1 individual that was identified -- or the female who
2 identified herself as Mia Sumner, what happened next?

3 A. I checked the name Mia Sumner in our records management
4 system, and then I came up with a full name and date of
5 birth for her. Found out she was 18 and had a couple of
6 outstanding juvenile warrants for her arrest. I also found
7 recent history with her where she had been reported as a
8 runaway or missing person in Duluth and then recovered on
9 August 19th in Duluth as well.

10 Q. Now, where was Mia Sumner at at the time that you were
11 finding all of this information out?

12 A. She would have either been walking to Officer
13 Leibfried's vehicle or already in the back of his vehicle
14 but still on scene or still in the area.

15 Q. Now, at that point in time, with those warrants that
16 were active, would you -- or did you arrest Mia Sumner?

17 A. We never placed her in handcuffs or told her she was
18 under arrest, no. But at that point, once I found out the
19 warrants, she was under arrest.

20 Q. Did you have any other interaction with Mia Sumner after
21 Officer Leibfried took her to his vehicle?

22 A. I did not.

23 Q. Now, when Mia Sumner provided you that information about
24 killing Fat Back, did you believe that information on August
25 20th, 2019?

1 A. I did not.

2 Q. And, again, we discussed it, but you hadn't heard
3 anything about a murder that had occurred on Red Lake?

4 A. I hadn't heard anything about a murder or anything like
5 that. And then also when I looked up the history on her
6 name, especially considering in her statement to me she knew
7 nobody in Duluth and didn't know where she was, but in our
8 records management system, it showed that just a day prior,
9 she had been recovered in Duluth as a runaway. She had been
10 entered as a runaway from Duluth. I -- you know, she had --
11 she had St. Louis County warrants for her arrest that
12 indicated to me that she was from the area. So it just kind
13 of further reinforced my belief that her statement wasn't
14 making any sense.

15 Q. Now, after your interaction with Mia Sumner on
16 August 20th, 2019, did you have an opportunity to learn
17 further information about a murder that occurred at Red
18 Lake?

19 A. I did.

20 Q. Describe, please.

21 A. So my -- my shift ended on the 20th at 5:00 a.m. I
22 work -- at that time, we worked four days on and four days
23 off. That was my third day of the rotation. I came back to
24 work on the 20th at night for my final day of my rotation.
25 And then at -- on the 21st at 5:00 a.m., when I was being

1 relieved by the incoming sergeants, at that time we brief
2 each other on what had occurred during the week. I was
3 relaying the information about the drive-by shooting that we
4 had been investigating, and I mentioned Mia Sumner, the
5 female I had found at the end of that shooting who claimed
6 that she had shot a guy and stole his car. I told that
7 sergeant, it actually -- I told him that she told us this
8 and just I didn't believe it. It was almost kind of a funny
9 story, if you will. And he then tells me that in the
10 newspaper that morning there was an article about a murder
11 on Red Lake.

12 Q. What did you do in response to that?

13 A. I contacted the Red Lake PD. The officer I spoke with,
14 I don't know if he wasn't involved in the investigation or
15 what. He didn't really want to give me any information. He
16 took down my contact information though.

17 Q. And did you hear anything else from anyone over at Red
18 Lake?

19 A. A couple hours later I received a phone call from the
20 FBI who told me they were investigating a murder on the
21 reservation. And I passed on the information on my contact
22 with Ms. Sumner and advised them that she was currently at
23 the Arrowhead Juvenile Center under arrest on a couple
24 warrants.

25 MS. AANSTAD: Thank you, Sergeant Dejesus. I have

1 no other questions.

2 THE COURT: Ms. Elkins, cross?

3 **CROSS-EXAMINATION**

4 BY MS. ELKINS:

5 Q. Sergeant Dejesus, is methamphetamine a problem in
6 Duluth?

7 A. It is.

8 Q. And do you encounter people high on meth with some
9 regularity?

10 A. With some regularity, yes.

11 Q. Okay. And how can you tell if someone is high on
12 methamphetamine?

13 A. Typically, they present as being nervous, very -- very
14 jittery, constantly moving around, looking around, have a
15 hard time controlling their motor movements. Kind of their
16 arms flailing, their hands clenching, unclenching, things
17 like that.

18 Q. And was Ms. Sumner kind of exhibiting all those telltale
19 signs?

20 A. She was.

21 Q. Okay. Now, your report was written on August 20th,
22 2019. Did you do it after your shift ended at 5:00 a.m.?

23 A. I didn't write my report until August 25th when I
24 returned from my days off.

25 Q. Okay. So about five days later?

1 A. Correct.

2 Q. Had you reviewed your body cam video on August 25th when
3 you wrote the report?

4 A. I did.

5 Q. Okay. And still that was about two and a half years
6 ago; right?

7 A. Correct.

8 Q. How many people do you arrest every year?

9 A. That would be -- I couldn't tell you.

10 Q. Over 100?

11 A. When I was a patrol officer, yes. As a sergeant, no,
12 probably not that many.

13 Q. Okay. Would you say you encounter at least 100 people a
14 year even if you don't arrest them?

15 A. Yes.

16 Q. Okay. And you were a sergeant back in 2019?

17 A. I was.

18 Q. Okay. So you wrote your report just five days after
19 having this encounter with Mia Sumner. Do you believe that
20 five days after the event your mind was probably fresher
21 then than two and a half years later after the event?

22 A. I do.

23 Q. Okay. And in preparing for today's hearing, were you
24 able to review your report?

25 A. I did.

1 Q. And were you able to review the body camera footage?

2 A. I was, yes.

3 Q. Okay. And so did that help you fresh your recollection
4 somewhat?

5 A. It did, yes.

6 Q. But still your report would probably be a more reliable
7 rendition of your -- of what you believed happened on
8 August 20th, 2019?

9 A. Yes.

10 Q. Okay.

11 MS. ELKINS: Your Honor, we would move to enter
12 the two-page report written by Sergeant Dejesus on
13 August 25th, 2019, as Sumner Defense Exhibit 1.

14 THE COURT: Ms. Aanstad?

15 MS. AANSTAD: No objection.

16 THE COURT: Defense Exhibit -- Sumner Exhibit 1 is
17 admitted.

18 MS. ELKINS: Thank you, Your Honor.

19 BY MS. ELKINS:

20 Q. Sergeant, you said at one point that you put Ms. Sumner
21 in the back of the squad and then shut the door?

22 A. I did.

23 Q. And where did you go at that point?

24 A. I crossed the street throwing some garbage away,
25 throwing the crime scene tape into a garbage can, and then I

1 had a conversation with some of the other officers about
2 things that needed to be completed related to the
3 investigation we were on.

4 Q. Okay. And you said there were still about four or five
5 officers in the area?

6 A. I believe so.

7 Q. And how many squads were still there?

8 A. There would have been four or five. Each officer has
9 their own squad car.

10 Q. Okay. So you were kind of sending people to go patrol
11 and do other stuff after you're wrapping up the scene?

12 A. Correct.

13 Q. Okay. When you do go back to Ms. Sumner, you open the
14 door for her in the back; correct?

15 A. Yes.

16 Q. Can someone sitting in the back of your squad, is there
17 a handle inside? Can they -- can they open the door?

18 A. There's no handle. They can't open it from the inside,
19 not in the back.

20 Q. Okay. So you open the back door right where she's
21 sitting to speak with her at that point?

22 A. Yes.

23 Q. But you didn't run her name yet; correct?

24 A. Correct.

25 Q. And at first, as you can see in the video, you ask her

1 some questions, but she doesn't really answer; correct?

2 A. No.

3 Q. So you ask her more questions, and eventually she
4 started to give you some mumbling answers?

5 A. Correct.

6 Q. But she was being pretty vague?

7 A. She was.

8 Q. And, again, her physical mannerisms in the video, it
9 seems like she's high on meth?

10 A. I believe she was impaired, yes.

11 Q. Okay. Her speech was a little slow?

12 A. A little slow. A little quiet maybe.

13 Q. And you asked her about using methamphetamine?

14 A. I did.

15 Q. And she admitted but she said it had been much earlier;
16 correct?

17 A. She said a few days ago.

18 Q. Okay. But you had reason to believe she had used
19 recently?

20 A. Typically when I'm speaking with somebody who is under
21 the influence of -- whether it be drugs or alcohol, they are
22 not completely honest with how much they have used or how
23 recently.

24 Q. Okay. And because of the way she was acting and
25 responding, you asked her if she even knew where she was;

1 correct?

2 A. Correct.

3 Q. And she responded that she didn't know?

4 A. Correct.

5 Q. And that's when you had the conversation about whether
6 or not she knew anyone in Duluth?

7 A. Yes.

8 Q. And you asked her how she got to Duluth?

9 A. I did.

10 Q. And she told you she stole a car?

11 A. She did.

12 Q. She said she stole her car; right?

13 A. When I asked her whose car she stole, she said her car.

14 Q. Okay. And then you asked her, Well, how do you steal
15 your own car? And she replied, It wasn't my car. I killed
16 Fat Back?

17 A. I believe that was -- yeah, I believe that was her exact
18 phrasing.

19 Q. Okay. And then you asked, How did you kill Fat Back?

20 A. I did.

21 Q. And she responded, With a gun?

22 A. Yes.

23 Q. You asked, Where is the gun? And she responded, I don't
24 know.

25 A. She said she didn't know, and then she made a statement

1 that it was in Red Lake.

2 Q. Okay. So she kind of just clarified, I don't know.

3 It's in Red Lake somewhere, or something like that?

4 A. Correct.

5 Q. Okay. And based on this, you asked her to hop out of
6 the squad car so you could check her for weapons?

7 A. Correct.

8 Q. And she complied?

9 A. She seemed a little hesitant to step out at first, but I
10 kind of told her, Come on out, and she did. We didn't have
11 to pull her out of the car or anything.

12 Q. And when she hops out of the squad car, there's another
13 officer standing there?

14 A. Yes.

15 Q. Is that Officer Leibfried?

16 A. No. That was Officer Taheri.

17 Q. Okay. But it was Officer Leibfried you asked to
18 transport her to St. Luke's Hospital?

19 A. Correct.

20 Q. Okay. After she hopped out and you frisked her, you
21 placed her back into your squad?

22 A. I did.

23 Q. And then you questioned her further about the identity
24 of Fat Back?

25 A. I did.

1 Q. And she told you Fat Back is Daniel Johnson?

2 A. Yes.

3 Q. Okay. And based on her condition, you didn't believe
4 her story at the time?

5 A. I did not.

6 MS. ELKINS: Thank you. No further questions.

7 **REDIRECT EXAMINATION**

8 BY MS. AANSTAD:

9 Q. Just briefly, Sergeant. Looking -- we've still got
10 Government Exhibit 5 up. There were other officers at the
11 scene with squad cars; right?

12 A. Correct.

13 Q. And were the squad cars all bunched together near your
14 squad car on Third?

15 A. There were several near my squad car, and then there
16 were also cars on the other side of the intersection.

17 Q. Okay. And during your interaction -- initial
18 interaction with Ms. Sumner, were there other officers that
19 were standing next to you?

20 A. No.

21 Q. What about -- and I guess I should clarify that for the
22 record. When you are at the bus stop, there were no other
23 officers that went to the bus stop with you?

24 A. Not that I recall, no.

25 Q. What about when you transferred or led Ms. Sumner to

1 your vehicle?

2 A. I don't recall there being any other officers there.

3 Q. Were you, you know, directing anyone to come over and
4 help you out?

5 A. No, not at that point.

6 Q. And in that squad video that we see in Government
7 Exhibit 4, was there an officer that was standing next to
8 you as you were talking with Ms. Sumner?

9 A. Sorry. In the body cam video?

10 Q. Yes.

11 A. When I was talking to her, no. When she started talking
12 about the gun, I had called Officer Taheri over. I could
13 still see him in the area, so I called him over to my -- to
14 my location.

15 Q. And why did you do that?

16 A. Because I was going to remove her from the squad car and
17 do a check for weapons. Just in case there was a weapon, I
18 would want another officer there to hand that off to when I
19 removed it from her.

20 Q. Now, when -- again, when you placed Ms. Sumner -- or
21 when you -- when she went over to your vehicle the first
22 time and you placed her in the backseat, at that time was
23 she under arrest?

24 A. No.

25 Q. Did you know that she'd committed any crime?

1 A. No.

2 Q. And did you search her?

3 A. No.

4 Q. Now, you were asked a lot of questions on
5 cross-examination about indications that someone is on
6 methamphetamine?

7 A. Yes.

8 Q. Could there be other explanations for the demeanor that
9 you saw in Ms. Sumner on August 20th, 2019?

10 A. There could.

11 Q. Like what?

12 MS. ELKINS: Objection. Calls for speculation.

13 MS. AANSTAD: I'll ask another question.

14 THE COURT: Sustained. Is there foundation you
15 can lay?

16 MS. AANSTAD: I'll ask another question,
17 Your Honor.

18 THE COURT: Okay.

19 BY MS. AANSTAD:

20 Q. Now, again, on August 20th, 2019, you didn't know about
21 a murder that had occurred on Red Lake?

22 A. Correct.

23 Q. You didn't know Ms. Sumner?

24 A. Correct.

25 Q. And it was only after your interaction that you later

1 learned that there was a murder at Red Lake?

2 A. Correct.

3 Q. Do you know any facts about that murder from Red Lake?

4 A. I do not.

5 MS. AANSTAD: Thank you. I have no further
6 questions.

7 THE COURT: Ms. Elkins?

8 MS. ELKINS: Nothing further.

9 THE COURT: Any reason the witness shouldn't be
10 excused?

11 MS. ELKINS: No, Your Honor.

12 THE COURT: Ms. Aanstad?

13 MS. AANSTAD: No, Your Honor.

14 THE COURT: All right. Sergeant, if you would
15 clean up the area as you were instructed and then replace
16 the cover on the microphone. Once that's done, you're free
17 to leave.

18 THE WITNESS: Thank you.

19 THE COURT: Ms. Aanstad, any other witnesses?

20 MS. AANSTAD: No, Your Honor. The Government
21 rests.

22 THE COURT: Ms. Elkins?

23 MS. ELKINS: No witnesses, Your Honor.

24 THE COURT: Defense rests?

25 MS. ELKINS: Defense rests.

1 THE COURT: All right. Mr. Zayed, I didn't ask
2 you before but relative to your motions on the search
3 warrant, does the defense rest?

4 MR. ZAYED: Yes, Your Honor.

5 THE COURT: All right. Any change in the briefing
6 schedule based on anything you heard today?

7 MS. AANSTAD: No, Your Honor.

8 MR. ZAYED: No, Your Honor.

9 MS. ELKINS: No, Your Honor.

10 THE COURT: All right. So the defendants are
11 going to jointly, I suppose, order a transcript or -- yep.

12 MS. ELKINS: Based on what I've learned earlier,
13 Your Honor, my office will order them.

14 THE COURT: Okay. 14 days from the court
15 reporter, the -- once the transcript is received, both
16 defendants will have two weeks, 14 days following receipt to
17 file their memorandums relative to their respective motions
18 to suppress. Once the Government has received all defendant
19 memorandums, the Government will have two weeks to respond
20 to the two motions to suppress. 14 days, two weeks,
21 14 days.

22 All right. Anything else today?

23 MS. AANSTAD: No, Your Honor.

24 THE COURT: Mr. Zayed?

25 MR. ZAYED: No, Your Honor.

1 THE COURT: Ms. Elkins?

2 MS. ELKINS: No, Your Honor.

3 THE COURT: All right. We're adjourned. Thank
4 you.

5 (Court adjourned)

6 * * *

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9 I, Erin D. Drost, certify that the foregoing is a
10 correct transcript to the best of my ability from the
11 official digital recording in the above-entitled matter.

12

13 Certified by: s/ Erin D. Drost

14 Erin D. Drost, RMR-CRR

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